IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4982 of 2001
To
FIRST APPEAL No. 4983 of 2001
With
CROSS OBJECTION No. 89 of 2004
In
FIRST APPEAL No. 4982 of 2001
With
CROSS OBJECTION No. 2 of 2007
In
FIRST APPEAL NO. 4983 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
DEVKUVARBA WD/O KARANSINH NAVALSINH RATHOD & 6 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR JIGAR P RAVAL for Defendant(s) : 1 - 3.
NOTICE SERVED BY DS for Defendant(s) : 4 - 6.
MS MEGHA JANI for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Learned advocate Mr. Shah for the original claimants in First Appeal No.4983/2001 states that the claimants have filed the above-mentioned Cross Objection and have also paid the necessary Court fees. Office objections, if any, will be removed immediately. Registry to give regular number to the Cross Objection after removal of office objections.

2. These appeals as well as Cross Objections arise out of a common judgement and two separate awards passed by Motor Accident Claims Tribunal(Aux.), Ahmedabad in M.A.C.P. Nos. 1004/1999 and 805/1999 respectively.

3. On 28th August, 1999, one Karansinh Rathod was travelling along with his friend one Bharatbhai Maganlal Panchal in a Maruti Car. Their car met with an accident and dashed against the Matador coming from the opposite direction. Both the persons travelling in the

Maruti Car received serious injuries. Karansinh died almost instantaneously whereas Bharatbhai was shifted to a hospital at Himmatnagar and, thereafter, for further treatment at Ahmedabad. He however, succumbed to injuries while still in hospital on 5th September, 1999. For death of Karansinh, his heirs including widow, aged mother and one minor child filed Claim Petition being M.A.C.P. No.1004/1999 claiming compensation of Rs.15,00,000/-. For death of deceased Bharatbhai, his heirs which included his widow, two minor children and aged parents filed Claim Petition being M.A.C.P. No. 805/1999 claiming compensation of Rs. 12,00,000/-.

4. From the available material on record, the Tribunal came to the conclusion that both the drivers were negligent in equal proportion in causing the accident. The Tribunal thus apportioned 50% negligence on the driver of Matador as well as on deceased Bharatbhai.

5. With respect to quantification of amount of compensation in M.A.C.P. No.1004/1999 filed by heirs of deceased Karansinh, the Tribunal assessed loss of dependency benefits of family at Rs.4750/- per month, considering that the deceased was employed as a Constable at the time of accident. Considering the age of deceased being 32 years, the Tribunal adopted multiplier of 15 and thus awarded a sum of Rs. 8,55,000/-

(Rs.4750/-x12x15) under the head of loss of dependency benefits. To the said sum, the Tribunal added a sum of Rs.20,000/- under the conventional head of loss to estate and Rs. 5,000/- for funeral expenses. The Tribunal thus awarded a total compensation of Rs.8,80,000/- to the claimants to be recovered from the insurance company with 9% interest from the date of claim petition till realisation.

6. In M.A.C.P. No. 805/1999 filed by heirs of the deceased Bharatbhai, the Tribunal assessed yearly dependency of family at Rs. 40,000/-. Multiplier of 15 for deceased aged 36 years was adopted. Thus, the Tribunal awarded a sum of Rs. 6,00,000/-(Rs.40,000/-x15) under the head of loss of dependency benefits. The Tribunal added Rs. 20,000/- towards conventional head of loss to estate, Rs.75,000/- towards medical bill, Rs.15,000/- towards pain shock and suffering and Rs. 5,000/- for funeral expenses. The Tribunal thus assessed total compensation at Rs.7,15,000/-. However, considering 50% contributory negligence of the deceased himself, the Tribunal awarded only half of the said amount i.e. Rs.3,57,500/- to be recovered from the insurance company with 9% interest from the date of claim petition till realisation.

7. Before us the appellant insurance company(insurer of the Matador) has filed the

above First Appeals challenging the said common judgement and two separate awards passed by the Tribunal. The claimants have also filed Cross Objections seeking enhancement of the compensation granted.

8. Learned advocate Mr. Vibhuti Nanavati for the appellant insurance company submitted that in both the Claim Petitions, Tribunal erred in not deducting the amount towards personal expenditure of the deceased persons while assessing compensation to be awarded to the claimants. He submitted that ordinarily, Courts are accepting the principle of deducting 1/3rd amount out of the prospective earning of the deceased for his personal expenditure. He submitted that accordingly both awards are required to be reduced.

9. On the other hand, learned advocate Mr. Jigar Raval for the claimants who have filed Cross Objection No. 89/2004 in First Appeal No.4982/2001 submitted that the Tribunal did not take into account future prospective income of the deceased. He submitted that the deceased was employed as Constable at the time of accident. With passage of time, he would have got periodical pay increments and promotions. He therefore, submitted that the award passed by the Tribunal is required to be enhanced.

10. Learned advocate Shri Dharmesh Shah for the claimants who have filed Cross Objection No.2/2007 in F.A. No.4983/2001 also submitted that the Tribunal has not taken into account future prospective increase in the income of the deceased. He submitted that the deceased was a partner in a partnership firm which was running a factory. With passage of time, the income of the deceased would have increased manifold. He further submitted that even if some amount is to be set apart for personal expenditure of the deceased himself, considering that as many as five other persons were dependent on the deceased, such deduction at any rate cannot be 1/3rd of total prospective income of the deceased. He further submitted that the Tribunal also erred in holding the deceased himself negligent to the extent of 50% in causing the accident.

11. Having heard the learned advocates appearing for the parties, we find that the Tribunal correctly decided the question of negligence of two drivers in causing the accident. Though the claimants have examined at exh.50 alleged eye-witness, the Tribunal discarded the deposition primarily on the ground that the witness did not come across as a truthful witness. Notably, witness Balvantbhai Kalidas Panchal admitted that he was employed in the factory of deceased Bharatbhai. In any case, from his evidence also,

it has come on record that both the vehicles were lying on one side of the road. Considering this statement and also taking into account the panchnama of the scene of accident, it would appear that Matador had not travelled on the wrong side of the road while causing the accident. That being so, the Tribunal correctly found that driver of both the vehicles were equally negligent in causing the accident. Apportionment of 50% negligence of both the drivers therefore, in our view was justified.

12. Coming to the question of quantification of compensation in M.A.C.P. No. 1004/1999 filed by heirs of deceased Karansinh, we find that the deceased was employed as a Constable on the date of accident. His salary slip produced on record showed that he was earning a salary of Rs. 4755/- per month. The Tribunal accepted the said figure straightway without adjusting any amount for personal expenditure of the deceased himself. In that view of the matter, contention of learned counsel for the appellant insurance company that the Tribunal committed a legal error is quite correct. However, at the same time, we also notice that the Tribunal made no provision for assessing future increase in the income of the deceased. The deceased being employed in Government service was entitled to get periodic pay increments and promotions in due course of time. The Tribunal therefore,

ought to have taken into account such prospective increase in his salary. Thus Tribunal erred on both the counts. However, even if one were to double the current income of the deceased as his future income and take average thereof for the purpose of adopting a uniform prospective income of the deceased for rest of his life and reducing 1/3rd thereof for personal expenditure of the deceased, one would still come back to same basic figure of Rs. 4755/- per month which can be set apart for the family by way of loss of dependency benefits. Thus, though we are inclined to uphold the contention of both learned advocates on the question of deducting for personal expenditure of the deceased as well as of consideration of future prospective income, sum total of this exercise would still bring back the same figure of Rs. 4755/- per month for the loss of dependency benefits of the family. In that view of the matter, we find that the Tribunal committed no error in the ultimate assessment of loss of dependency benefit at Rs.8,55,000/-(considering the multiplier of 15 which was agreed to by both the sides before the Tribunal). We however, notice that the Tribunal awarded no sum for loss of consortium to the widow of the deceased. The claimants therefore, would receive a sum of Rs. 10,000/- under the said head.

13. In the result, claimants in M.A.C.P.

No.1004/1999 relating to First Appeal No.4982/2001 would receive following amount of compensation :

Rs.8,55,000/-	towards loss of dependency benefits.
Rs.20,000/-	towards conventional amount of loss to estate.
Rs.10,000/-	towards loss of consortium
Rs.5,000/-	towards funeral expenses.

Rs.8,90,000/-	total compensation

14. With respect to M.A.C.P. No.805/1999, filed by heirs of the deceased Bharabhai, at the outset, we may observe that the Tribunal committed same errors in not taking future possible rise in income of the deceased into account as also not providing for any deduction for personal expenditure of the deceased from his income. We are however, not inclined to disturb the assessment of income of the deceased at Rs. 40,000/- per annum as the same is borne out from reliable documents in the form of income tax returns. The Tribunal also correctly discarded the latest income tax return produced on record since same was admittedly filed after the date of accident and that there was substantial variance between the income indicated in such a return as compared to the immediately preceding return. In that view of the matter, assessment of Rs. 40,000/- per annum as income of the deceased, calls for no modification. With passage of time and steady increase in annual returns through partnership

firm which the deceased was receiving, it could be expected that his earning would have at-least doubled. Thus adopting Rs. 80,000/- as future income of the deceased and taking average of the current as well as future income, we find that Rs. 60,000/- would be the prospective income of the deceased for his entire life span.

15. Ordinarily, though rule of deduction of 1/3rd for personal expenditure of the deceased is well established, in facts of this case, when we find that since as many as five family members were dependent on the sole income of the deceased, rule of 1/3rd deduction cannot be applied. As noticed earlier, dependents on deceased Bharatbhai included his widow, two minor children and aged mother and father who on the date of accident were stated to be of 65 and 71 years respectively. Considering the facts and circumstances of the case, we find that appropriate deduction of 1/4th amount from the income of the deceased would be justified. Out of the assessed prospective income of the deceased at Rs. 60,000/- per annum, family would therefore, receive Rs.45,000/- after deducting Rs. 15,000/- for personal expenditure of the deceased. Thus loss of dependency benefits would be Rs.6,75,000/-(Rs.45000/-x15). We find no reason to modify the directions for payment of Rs.20,000/- for loss to estate as well as directions for payment of medical bills, pain

shock and suffering and funeral expenses. Like in the previous case, here also, widow would receive a sum of Rs. 10,000/- towards consortium. Thus total calculation of compensation would therefore, be as follows :

Rs.6,75,000/-	towards loss of dependency benefits
Rs. 75,000/-	towards medical bills
Rs. 20,000/-	towards loss to estate
Rs. 15,000/-	towards pain, shock and suffering
Rs. 5,000/-	towards funeral expenses
Rs. 10,000/-	towards loss of consortium

Rs.8,00,000/-	total compensation

16. Considering 50% contributory negligence of the deceased himself, claimant would receive a total compensation of Rs. 4,00,000/- from the insurer of the Matador.

17. With these directions, both the First Appeals as well as Cross Objections are disposed of.

18. Direction for payment of 9% interest remain unchanged and will apply also to the additional amounts awarded under this judgement.

19. Both the awards stand modified accordingly.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)